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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES and NEW YORK STATE *ex rel.*  
INTEGRITY ADVOCATES LLC,

Plaintiffs,

vs.

COMPREHENSIVE ANESTHESIA SPECIALISTS,  
P.C. ("CAS"); AMBULATORY VASCULAR CARE  
MANAGEMENT, LLC; AV CARE CENTERS;  
RICHARD J. HARRIS; ACQUISTA AND MATTOO  
MEDICAL ASSOCIATES, PLLC; MATTOO BHAT  
MEDICAL ASSOCIATES, P.C.; and DR. FENG QIN,

Defendants.

No. 12 Civ. 2327 (LLS)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

vs.

MATTOO & BHAT MEDICAL ASSOCIATES, P.C.,  
and DR. FENG QIN,

Defendants.

**STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL**

This Settlement Agreement ("Agreement") is entered into by and among the United

States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively the "United States"), Defendant Feng Qin, M.D. ("Dr. Qin" or "Defendant"), and Relator Integrity Advocates LLC ("Relator") (collectively referred to as "the Parties"), through their authorized representatives.

### **RECITALS**

WHEREAS, Mattoo & Bhat Medical Associates, P.C. ("MBPC") is a nephrology medical practice established in 1993, which, in or about April 2010, began to operate two office-based surgery facilities in Manhattan and Queens (the "AV Care Centers"), which were managed by Ambulatory Vascular Care Management, LLC ("AV Care") pursuant to an agreement;

WHEREAS, the AV Care Centers operated until about April 2012;

WHEREAS, MBPC employed Dr. Qin as a vascular surgeon to work at the AV Care Centers from on or about December 2010 to on or about April 2012;

WHEREAS, the AV Care Centers provided vascular surgery services to patients with end-stage renal disease ("ESRD") who received dialysis, and required well-functioning vascular access in order for them to be effectively dialyzed: two of the most common procedures performed at the AV Care Centers were fistulagrams (a radiological procedure in which dye is injected into the patient's vein or artery to visualize it) and angioplasties (in which wires and balloons are inserted into veins or arteries that have narrowed in order to restore the blood flow);

WHEREAS, the patients treated at the AV Care Centers were all enrolled in the Medicare program established by Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.* ("Medicare");

WHEREAS, Relator is a limited-liability corporation whose members are Larry Lee, M.D.; Damion Sanchez, M.D.; and Xavier Vicioso, M.D.;

WHEREAS, on March 23, 2012, Relator filed a *qui tam* complaint in the above-captioned action in the United States District Court for the Southern District of New York, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”);

WHEREAS, the United States intervened in the Civil Action on April 30, 2015, as against MBPC and Dr. Qin;

WHEREAS, the United States contends that MBPC submitted or caused to be submitted claims for payment pursuant to the Medicare Program for services rendered by its providers, including Dr. Qin;

WHEREAS, the United States’ Complaint-in-Intervention alleges that from April 2010 to April 2012, MBPC and Dr. Qin performed and billed Medicare for fistulagrams and angioplasties without having the required clinical findings to support such billing and performed routine fistulagrams for screening purposes (the “Covered Conduct”), resulting in violations of the FCA;

In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. The Parties consent to this Court’s exercise of personal jurisdiction over each of them with respect to this action.
2. Defendant shall pay to the United States ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (the “Qin Settlement Amount”) no later than 30 days after the

Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York.

3. Defendant admits, acknowledges, and accepts responsibility for the following facts relative to his employment with MBPC:

- a) Defendant was employed as a salaried vascular surgeon pursuant to a contract with MBPC, a nephrology medical practice.
- b) Defendant understands that MBPC had earlier received accreditation from the American Association for Accreditation of Ambulatory Surgical Facilities to operate an Office-Based Surgery ("OBS") facility in Manhattan and in Queens. Defendant also understands that the OBS portion of MBPC's practice was managed by AV Care.
- c) MBPC's OBS patients were individuals with ESRD who regularly required, and received, dialysis treatments. These patients required well-functioning vascular access in order for them to be effectively dialyzed.
- d) At MBPC, Defendant provided ESRD-related vascular access services, such as creation and maturation of fistulas (a port in the patient's arm to obtain access to the patient's circulatory system), fistulagrams (a radiological procedure in which dye is injected into the patient's vein or artery to visualize the port) and angioplasties (in which wires and balloons are inserted into veins or arteries that have narrowed in order to restore the patient's blood flow).
- e) Local Coverage Determination L30737, Dialysis Coverage Maintenance, issued by National Government Services, Inc., on or about June 1, 2010, as amended over time (the "LCD"), states that "[t]ypically, the clinical examination provides

adequate information to determine whether there is hemodynamically significant dialysis shunt dysfunction,” and listed certain “clinical findings [that] are considered diagnostically specific and appropriate indications to initiate therapies to re-establish physiologically appropriate flow in the dialysis fistula.”

- f) The LCD provided that fistulagrams “performed to evaluate an AV access on a routine basis in the absence of signs and symptoms, the services are considered monitoring, and are not separately covered by Medicare.” The LCD further provided that angioplasty “is not necessary for all poorly functioning AV dialysis accesses. Coverage will be considered if there is documentation supporting the presence of residual, hemodynamically significant stenosis, generally >50 percent of the vessel diameter.”
- g) As a regular practice, AV Care routinely scheduled patients for fistulagrams and angioplasties as many as three months in advance, and defendant performed these fistulagrams as a matter of routine even if the patient presented without a clinical reason for the fistulagram, such as indications of difficulty with dialysis. From time to time, Dr. Qin performed angioplasties on MBPC patients where the patient information and records did not support “the presence of residual, hemodynamically significant stenosis, generally >50 percent of the vessel diameter.”

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Defendant’s full payment of the Qin Settlement Amount, the United States releases Defendant from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary

Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C.

§§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Conditioned upon Defendant's full payment of the Qin Settlement Amount and the additional amount provided for in this Paragraph to be paid to Relator by Dr. Qin for attorneys' fees and costs, Relator, for itself and for its members to wit., successors, attorneys, agents, and assigns, releases Defendant (a) from any claim Relator has or could have had on behalf of the United States for the Covered Conduct and/or by reason of any cause, matter, thing, fact, circumstance, event or agreement relating to or arising from the Relator's Complaint or the United States Complaint under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, negligence, unjust enrichment, and fraud; and (b) from any claim that Relator has asserted or could have asserted, or may assert in the future for any acts or omissions that predated this Agreement. Defendant agrees to pay Relator \$16,000 in full satisfaction of all attorneys' fees and costs that Relator could have claimed against Defendant pursuant to 31 U.S.C. § 3730(d) (the "Relator Attorneys' Fee Payment"), no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel.

6. In consideration of Dr. Qin's obligations in this Agreement and in the Integrity Agreement ("IA"), entered into between OIG-HHS and Dr. Qin, and conditioned upon Dr. Qin's full payment of the Qin Settlement Amount, OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7(b)(f)

against Dr. Qin under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 7 below (concerning excluded claims) and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Dr. Qin from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for the conduct and practices, for which claims have been reserved in Paragraph 7 below.

7. Notwithstanding the releases given in Paragraphs 4, 5, and 6 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;

8. Relator and its members, successors, attorneys, agents, and assigns shall not object to this Agreement, and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned on Relator's receipt of the payment described in Paragraph 1 of the Stipulation and Order of Settlement and Release between Relator and the United States entered into simultaneously with

this Agreement (the "Relator Share Payment"), Relator, for itself, and for its members, successors, attorneys, agents, and assigns, release, waive, and forever discharge the United States, its agencies, officers, employees, servants, and agents, from any claims, known or unknown, arising from the filing of the Relator's Complaint and from any claims under 31 U.S.C. § 3730.

9. Defendant waives and shall not assert any defenses he may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Qin Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. Defendant fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Civil Action, the Covered Conduct and the United States' investigation and prosecution thereof.

12. Defendant and its members, agents, attorneys, successors, and assigns fully and finally release the Relator and its members Larry Lee, M.D.; Damion Sanchez, M.D.; and Xavier Vicioso, M.D, and their agents, attorneys, successors and assigns, from any claims (including



attorney's fees, costs, and expenses of every kind and however denominated) that predated this Agreement.

13. The Qin Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any federal contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any federal payer, related to the Covered Conduct; and Defendant agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. Defendant agrees to the following:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendant in connection with:
  - i. the matters covered by this Agreement;
  - ii. the United States' audit(s) and investigation(s) of the matters covered by this Agreement;
  - iii. Defendant's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
  - iv. the negotiation and performance of this Agreement;

v. the payments Defendant makes to the United States pursuant to this Agreement and any payments that Defendant may make to Relator, including costs and attorneys' fees; and

vi. the negotiation of, and obligations undertaken pursuant to IA to:

a. retain an independent review organization to perform annual reviews as described in any IA;

and

b. prepare and submit reports to the OIG-HHS

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in Paragraph 14.a.(vi) that may apply to the obligations undertaken pursuant to any IA affects the status of costs that are not allowable based on any other authority applicable to Defendant.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Defendant, and Defendant shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendant or

anyone on his behalf to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendant further agrees that within 90 days of the Effective Date of this Agreement he shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendant or anyone on his behalf, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Defendant agrees that the United States, at a minimum, shall be entitled to recoup from them any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendant or

anyone on his behalf on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendant's cost reports, cost statements, or information reports.

- d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Defendant's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. Except as expressly provided herein, this Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for herein.

16. Defendant agrees that he waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

17. Except as provided for in Paragraph 5, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Subject to the exceptions set forth in this Agreement, and in consideration of Dr. Qin's obligations in this Agreement, conditioned upon Dr. Qin's full payment of the Settlement Amount, the Government shall dismiss with prejudice the United States Complaint and, conditioned upon the Relator's receipt of the Relator Share Payment and the Relator Attorney's Fee Payment, the Relator shall dismiss with prejudice the Relator's Action against Dr. Qin.

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of New York. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

20. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

23. This Agreement is binding on Defendant's successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relator's members, successors, transferees, heirs, and assigns.

25. The Effective Date of this Agreement is the date it is entered by the Court.

26. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Signatures delivered by facsimile transmission or as .pdf attachments to emails shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

Dated: New York, New York  
April \_\_, 2015

**PREET BHARARA**

United States Attorney for the  
Southern District of New York

By: 

**REBECCA C. MARTIN**

**JEAN-DAVID BARNEA**

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*Attorney for the United States*

**U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
OFFICE OF INSPECTOR GENERAL**

Dated: Washington, D.C.  
April 29, 2015

By: Robert K. DeConti

ROBERT K. DECONTI

Assistant Inspector General for Legal Affairs

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Office of Inspector General

United States Department of Health and Human Services

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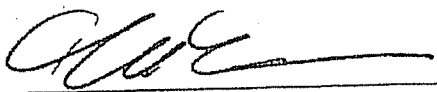
**DEFENDANT FENG QIN**

Dated: New York, New York  
April 29 2015

  
\_\_\_\_\_  
Feng Qin

Dated: New York, New York  
April 29 2015

**HOFFMAN POLLAND & FURMAN PLLC**

By:   
\_\_\_\_\_  
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**DEFENDANT DR. FENG QIN**

Dated: New York, New York  
April \_\_, 2015

\_\_\_\_\_  
Dr. Feng Qin

Dated: New York, New York  
April \_\_, 2015

**HOFFMAN POLLAND & FURMAN PLLC**

By: \_\_\_\_\_  
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**RELATOR**

Dated: New York, New York  
April 30, 2015

EDWIN X. VILCHOSO MD  
Integrity Advocates LLC

By: EDWIN X. VILCHOSO MD  
Title: PRESIDENT

Dated: Stamford, Connecticut  
April \_\_, 2015

**MURTHA CULLINA LLP**

**RELATOR**

Dated: New York, New York  
April \_\_, 2015

\_\_\_\_\_  
Integrity Advocates LLC

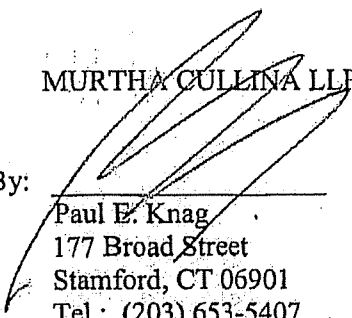
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Title: \_\_\_\_\_

Dated: Stamford, Connecticut  
April \_\_, 2015

MURTHA CULLINA LLP

By: \_\_\_\_\_

  
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SO ORDERED:

Louis L. Stanton  
The Honorable Louis L. Stanton  
United States District Judge

Dated: May 1, 2015